

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RITA CARNEVALE,)	
)	
Plaintiff Below/Appellant,)	
)	
v.)	C.A. No: U4-09-000873
)	
GERRY FULCHER,)	
WILMINGTON VIEWS JOURNAL,)	
AND)	
COMPULSIVE GAMBLING INST.,)	
)	
Defendants/Appellees.)	

Date Submitted: August 21, 2009
Date Decided: August 24, 2009

Ms. Rita Carnevale
717 N. Union St.
Wilmington, Delaware 19805
Plaintiff, Pro Se

Mr. Gerry Fulcher
1900 Howland Street
Wilmington, DE 19805
Defendant, Pro Se

Order on Reargument of Plaintiff's Motion for Default Judgment

A Reargument of Plaintiff's Motion for Default Judgment under *C.C.P. Civ.R. 59(e)* was presented before this Court on July 17, 2009. Following argument from both parties, the Court reserved decision. This is the Court's Final Order and Opinion.

Facts.

Plaintiff originally filed this breach of contract action before Justice of the Peace Court No. 13, which entered judgment in favor of Defendant Fulcher and dismissed Defendants Wilmington Views Journal and Compulsive Gambling Institute. Plaintiff subsequently filed a timely appeal with this Court.

The Praecipe filed by Plaintiff requested service upon all three Defendants/Appellees at 1900 Howland St, Wilmington, DE 19805. The Sheriff's Return, dated March 19, 2009, indicates that the sheriff served a copy of the Summons on Appeal upon Gerry Fulcher, Wilmington Views Journal, and Compulsive Gambling Institute by leaving copies with Gerry Fulcher at 1900 Howland St., Wilmington, DE 19805.

On March 27, 2009, Fulcher filed an Answer, apparently only on behalf of himself as an individual.¹ On April 27, 2009, Carnevale filed a Motion for Default Judgment, asserting that the Wilmington Views Journal and Compulsive Gambling Institute did not file responsive pleadings within 20 days of service, as required by Court of Common Pleas Civil Rule 12(a). Following a hearing on Plaintiff's Motion for Default Judgment on May 15, 2009, this Court issued an order dated May 18, 2009 denying the motion.

On May 21, 2009, Plaintiff faxed to the Court a letter disputing the May 18 order, which the Court liberally construed as a Civil Rule 59(e) Motion for Reargument. The motion was scheduled for a hearing on June 12, 2009. Plaintiff failed to appear on that date and the Court dismissed the case for failure to prosecute under Rule 41(e). On June 24, 2009, the Court received a letter from Plaintiff explaining that she had had a concurrently scheduled criminal motion which had prevented her from being present at the June 12 hearing. The Court therefore scheduled the motion for default judgment for reargument on July 17, 2009.

¹ The Answer was signed "Gerry Fulcher" and did not mention the Wilmington Views Journal or the Compulsive Gambling Institute.

The Law.

Court of Common Pleas Civil Rule 55(b) provides, in pertinent part, that the court may grant default judgment “[w]hen a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules ...” Entry of default judgment is within the discretion of the Court. Disposing of a case by default judgment is generally viewed with disfavor, as a trial on the merits is considered superior to a default judgment.²

Discussion.

As an initial matter, the Court finds that Plaintiff has shown sufficient grounds for vacating the Court’s Rule 41(e) dismissal order for failure to prosecute.³ The June 12, 2009 order is therefore vacated and the Court maintains jurisdiction over the matter.

The Court finds that under the circumstances of this case, entry of default judgment against Defendants Wilmington Views Journal and Compulsive Gambling Institute would not be proper and would achieve an inequitable result. The record does not reflect that Fulcher was properly put on notice, especially given his status as a *pro se* defendant, that he was to file responses on behalf of all three defendants. First, it is unclear from the Sheriff’s Return as to whether separate copies of the Summons on Appeal were served upon Fulcher as an individual and as an officer of the Views Journal

² *Daily Underwriters of America v. Maryland Auto Ins. Fund*, 2008 WL 3485807 at *2 (Del. Super.)

³ Court of Common Pleas Civil Rule 41(e) provides, in relevant part,

In the event that the Court shall conclude, sua sponte, that dismissal upon any of the foregoing grounds appear appropriate, the procedure for such dismissal shall be as follows: The Clerk shall forward to the party a notice directing that the party show cause why the action should not be dismissed for the reasons stated in the notice. The notice shall direct the party to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the action or maintaining jurisdiction of the case.

and the Compulsive Gambling Institute. Second, the organizational status of the Views Journal and Compulsive Gambling Institute is unclear.⁴ Fulcher asserts that the Views Journal and the Compulsive Gambling Institute are not registered corporations or partnerships, and are instead non-profit entities that have not filed for 501(c)(3) status. He therefore had concluded that he need not file responsive pleadings on behalf of these entities. Given these circumstances, it was reasonable for Fulcher to file his Answer as an individual only.

Pursuant to Court of Common Pleas Civil Rule 15(a), the Court will allow hereby Orders Defendant Fulcher to file responsive pleadings on behalf of Defendants Wilmington Views Journal and Compulsive Gambling Institute within 20 days of this Order.

Plaintiff's Motion for Default Judgment is hereby DENIED. Each party shall bear their own costs.

IT IS SO ORDERED.

John K. Welch
Judge

/jb
cc: LuAnn Smith, Civil Case Manager

⁴ The Court takes no position regarding the legal status of the Views Journal or Compulsive Gambling Institute, as this issue is not before the Court.